

Exhibit A

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT AND
MONETTE ROSEMARIE STEPHENS,

Debtors.

) Case No. 12-30143 DM

) (Chapter 7)

) A.P. No.

) **COMPLAINT OBJECTING TO**
) **DISCHARGE**

JANINA M. HOSKINS, TRUSTEE IN
BANKRUPTCY OF THE ESTATE OF
CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Defendants.

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1 Plaintiff Janina M. Elder, Trustee in Bankruptcy of the Estate of Carl Alexander Wescott
2 and Monette Rosemarie Stephens alleges:

3 JURISDICTION AND VENUE

4 1. On January 17, 2012, Debtors Carl Alexander Wescott and Monette Rosemarie
5 Stephens filed their joint Voluntary Petition for Relief under Chapter 7 of the Bankruptcy Code
6 in the above-entitled Court. Thereafter, Janina M. Hoskins was duly appointed as Chapter 7
7 Trustee in Bankruptcy therein.

8 2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
9 §§ 157, 1334 and 11 U.S.C. § 727. This matter is a “core proceeding” as defined by 28 U.S.C. §
10 157(b)(2)(J). Alternatively, Plaintiff consents to final judgment of the Bankruptcy Court
11 pursuant to the provision of 28 U.S.C. § 157(c)(2). Venue is proper here pursuant to the
12 provisions of 28 U.S.C. § 1409.

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14 GENERAL ALLEGATIONS

15 3. Commencing no later than 2005, the Debtors engaged in the business of
16 promoting and syndicating various speculative, high-risk, and fraudulent real estate investment
17 schemes. These included extensive highly leveraged land holdings in areas of the North Coast
18 region of California -and flawed land development schemes in Uruguay, Honduras, and Ecuador.

19 4. Virtually all of these investment schemes collapsed, leaving unpaid creditors
20 holding claims against the Debtors in excess of \$27 million according to the filed proofs of
21 claim.

22 5. Plaintiff alleges that the Debtors used a substantial portion of the investor
23 proceeds they raised to make personal investments and maintain a lavish personal lifestyle,
24 including purchases of premium sports tickets, luxury travel, expensive jewelry, and artwork, all
25 of which has allegedly disappeared.

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1 6. The Debtors' credit card charges averaged at least \$10,000 per month. Debtors
2 testified that they had received approximately \$1million in 2010 and 2011. According to their
3 Amended Schedule J their monthly expenses were \$7,600.00 a month for 2010 and 2011 which
4 totals \$182,400.00 for 2010 and 2011. The Debtors were unable to explain where the remaining
5 \$700,00.00 was spent in 2010 and 2011. In addition, the Debtors testified that they borrowed
6 \$500,000.00 in May of 2011 and could not explain where the funds had gone.

7 7. Plaintiff alleges that the Debtors withdrew \$299,949.00 between April 13, 2011
8 and April 22, 2011 from Pook Snook Dook LP, a fraudulent "asset protection" entity they
9 previously established. No accounting for these funds has been provided.

10 8. Plaintiff alleges that Wescott testified he was paid \$800,000.00 in 2010 by Jeremy
11 Smith for a second deed of trust on 7950 Hearst Road, Willits, CA. Plaintiff alleges that there
12 were no deposits of \$800,000.00 into any of Wescott/Stephens accounts from a loan payoff.

13 9. Plaintiff alleges that no later than the year 2008, it became apparent to the
14 Debtors that the likely value of their assets was greatly exceeded by the expected amount of their
15 liabilities, and that they would be subject to numerous legitimate 7 and 8 figure claims from
16 defrauded investors and other bona fide creditors.

17 10. Plaintiff alleges that Wescott and Stephens executed a transmutation agreement in
18 June of 2010 whereby Wescott received all the properties in Latin America which are valued at
19 several million dollars and Stephens received all the properties in California which were
20 worthless.

21 11. Plaintiff alleges that the Debtors routinely transferred monies between their
22 personal accounts and numerous corporations, LLCs and S.A.s for no consideration. Plaintiff
23 further alleges that the Debtors wired monies out of their personal accounts and corporations,
24 LLCs and S.A.s to Latin America.

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1 CLAIM OF RELIEF

2 (Objection to Discharge – 11 U.S.C. Section 727(a)(2)(A))

3 12. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1
4 through 11, inclusive.

5 13. On or about April 11, 2011, a date within one year before the petition date, the
6 Debtors voluntarily transferred various valuable assets from an established trust to Ivy League
7 Charter, LLC, a Nevada corporation which they established in April of 2011. The Debtors were
8 the trustees of the Pook Snook Dook Trust Limited Partnership, allegedly a trust for the benefit
9 of their three children in June of 2010. The Debtors acted to conceal their beneficial interest by
10 amending the certificate of limited partnership of Pook Snook Dook LP to name a shell Nevada
11 limited liability company, Ivy League Charter, LLC as the new general partner and the Pook
12 Snook Dook Trust as the 97% limited partner. On April 13 through April 22, 2011, the Debtor
13 withdrew \$299,949.00 from Ivy League Charter LLC. The Debtors cannot account for the
14 monies.

15 14. On April 18, 2011, the Debtors wired \$8,500.00 to Ogier, Inc., an offshore law
16 firm that provides fraudulent “asset protection”, legal and fiduciary services in the Cayman
17 Islands, according to its website. The Debtors had already sent Ogier \$7,500.00 on January 14,
18 2011. The Debtors did not list these payments to Ogier on their Statement of Financial Affairs.

19 15. On January 26, February 17, February 22 and February 24 of 2011, the Debtors
20 wired a total of \$230,200.00 to International Aircraft Title & Escrow in Oklahoma City,
21 Oklahoma. International Aircraft Title & Escrow offers aviation title services, domestically and
22 internationally, according to its website. The Debtors did not list any aircraft on their Schedules.

23 16. The Debtors made these transfers with the actual intent to hinder, delay or defraud
24 creditors.

25 WHEREFORE, Plaintiff prays for judgment as set forth below.
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SECOND CLAIM FOR RELIEF
(Objection to Discharge – 11 U.S.C. Section 727(a)(2)(B))

17. Plaintiff realleges and incorporate the allegations contained in Paragraphs through 16, inclusive.

18. At their meeting of creditors, The Debtors testified under oath, that neither of them are employed and neither have been employed for several years. The Debtors further testified under oath that they had no source of income in 2012. This testimony is false.

19. Atlas Consulting, Inc. is a corporation wholly owned by Stephens. Its only asset is a single family home in Santa Barbara, California whose first and second mortgages outweigh the value of home. Stephens owned the home as her separate property before marriage to Wescott and transferred title of the Santa Barbara home to Atlas Consulting in June of 2010.

20. On March 1, 2012 and March 2, 2012, Wescott transferred \$5,570.00 from his personal Wells Fargo account to Atlas Consulting, Inc. Between April 17, 2012 and June 2012, the Debtors deposited \$54,307.00 into the Atlas Consulting checking account. The Debtors spent \$58,420.00 from this account.

21. On March 27, 2012, an Order granting the Motion for Relief from Stay was granted as to HSBC Bank USA as holder of the first on 853 Ashbury St., San Francisco, CA, the home of the Debtors.

22. On June 1, 2012, the Debtors, without court authority, executed and recorded a Grand Deed for 853 Ashbury St., San Francisco, CA purportedly transferring their interest in their home. The Debtors claimed the new buyers were Alma Rojas and the Ellador Ramirez Revocable Trust and the Carls Wescott Revocable Trust which named Wescott and Stephens as Trustees. The Debtors paid Team Fecteau, Inc. a California corporation, whose motto on its website is "We Short the Bank, Not the Homeowner" to facilitate the transaction.

23. Despite having no earnings or income, Atlas Consulting recorded \$44,200.00 in deposits between January 18, 2012 and May 31, 2102.

1 24. On March 27, April 17 and April 18 of 2012, the Debtors caused Atlas
2 Consulting to wire out a total of \$12,657.00 to bank accounts at Banco Pichincha, Banco
3 Internacional, and Banco De Guayaquil. All of these banks are located in Ecuador.

4 25. On May 24, 2012, the Debtors caused Atlas Consulting to pay \$1,750.00 for
5 tickets for a Broadway show at the Curran Theater in San Francisco.

6 26. The Debtors made these post-petition transfers with the actual intent to hinder,
7 delay or defraud creditors and officers of the estate.

8 WHEREFORE, Plaintiff prays for judgment as set forth below.

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10 THIRD CLAIM FOR RELIEF
11 (Objection to Discharge – 11 U.S.C. Section 727(a)(3))

12 27. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1
13 through 26, inclusive.

14 28. The Debtors have failed to produce documents regarding their numerous business
15 holdings despite repeated demands by the Trustee and Court orders to do so. Specifically, the
16 Debtors have failed to produce financials records for their various corporations, LLCs and S.A.s.
17 On September 6, 2012, the Trustee's counsel, pursuant to a Court order, reviewed records at the
18 Debtors' home. There were no records for any entities for 2011. However, there were records
19 for some of the Debtors' business entities for 2008 and 2009. There were large gaps of files
20 missing and Wescott's portion of the Debtors' home office was in disarray.

21 29. The Debtors testified that there were 150 boxes of documents in various locations
22 including Ecuador. Despite traveling to Ecuador on numerous occasions, Wescott has not
23 produced any documents from Ecuador despite a Court order.

24 30. On July 13, 2012, this Court issued an Order for 2004 Examination of the
25 Debtors' records. The Trustee requested the Order after the Debtors filed Amended Schedules
26 on July 10, 2012 and this was the second 2004 Order for Examination of the Debtors. On

1 August 8, 2012, Wescott filed a Motion to Quash. The Motion was denied and the Debtors were
2 ordered to turnover documents pursuant to the July 13, 2012 Court order and the Order
3 Compelling Turnover of Documents issued on June 17, 2012.

4 31. The Debtors' counsel, Ms. Gropper Nelson, informed the Trustee's counsel and
5 this Court that she had three boxes of documents in her office pertaining to the 2004 Orders.

6 32. After August 26, 2012 when the Court entered its Order denying Wescott's
7 Motion to Quash, Ms. Gropper Nelson allegedly turned over the boxes of documents in her
8 office to a service at the request of the Debtors. The Debtors never turned over the documents.

9 33. The Debtors concealed or failed to preserve any recorded information which the
10 Debtors' financial condition or business transactions might be ascertained for 2010 and 2011.

11 WHEREFORE, Plaintiff prays for judgment as set forth below.

12
13 FOURTH CLAIM FOR RELIEF

14 (Objection to Discharge – 11 U.S.C. Section 727(a)(4)(A))

15 34. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1
16 through 33, inclusive.

17 35. On March 21, 2012, the Debtors were asked about a diamond ring owned by
18 Stephens at the 341 hearing. Wescott testified under oath that he had paid \$100,000.00 for the
19 ring. Stephens falsely testified that she had lost the ring while swimming. She also falsely
20 testified that they had recently changed insurance companies and did not realize that her
21 \$100,000.00 diamond was not insured.

22 36. Wescott falsely testified that he had no bank accounts outside the United States.
23 However, there are numerous wires to banks in Ecuador, Honduras and Panama including wires
24 to foreign bank accounts post-petition.

25 37. The Debtors could not account for the \$1 million they received in 2011 and could
26 only account for the expenses listed on Schedule I. However, the Debtors had routinely wired

monies out of the country during 2011 according to bank records the Trustee subpoenaed.

38. The Debtors Schedules and Statement of Affairs are false and inaccurate. After amending their schedules for the third time, the Debtors failed to list all of the corporations, LLCs and S.A.s they control. The Debtors listed real property as property of the estate that belongs to one of their LLCs. The Debtors claimed payments on a vehicle that is owned by a LLC. The Debtors failed to list the payments to Ogier, Inc. a law firm on their Statement of Financial Affairs. The Debtors failed to list bank accounts that they controlled as the managing member of various corporations, LLCs and S.A.s.

39. The Debtors made knowingly false oaths and false accounts.

WHEREFORE, Plaintiff prays for judgment as set forth below.

FIFTH CLAIM FOR RELIEF

(Objection to Discharge – 11 U.S.C. Section 727(a)(4)(D))

40. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 39.

41. After this Court denied Wescott's Motion to Quash, Ms. Gropper Nelson turned over three boxes of documents in her possession, pursuant to a 2004 Examination Order, to a service, allegedly, per a request made by the Debtors.

42. Despite the Court order denying the Motion to Quash, the Debtors have failed to turnover the boxes of documents in their possession pursuant to the 2004 Examination Orders issued on June 17, 2012 and July 13, 2012.

43. The Debtors intentionally withheld from the Trustee documents relating to the Debtors' property or financial affairs.

WHEREFORE, Plaintiff prays for judgment as set forth below.

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SIXTH CLAIM FOR RELIEF
(Objection to Discharge – 11 U.S.C. Section 727(a)(5))

44. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 43, inclusive.
45. Despite testifying at three continued First Meeting of Creditors, the Debtors are unable to account for \$700,000.00 of the \$1 million they received in 2010 and 2011.
46. The Debtors cannot account for \$800,000.00 that was paid to them on a second deed of trust and there are no deposits into any of their accounts for a payment of \$800,000.00, the amount Wescott testified he received from the payoff of a second deed of trust.
47. The debtors have failed to explain satisfactorily the loss of assets to meet their liabilities.

WHEREFORE, Plaintiff prays for judgment as set forth below.

SEVENTH CLAIM FOR RELIEF
(Objection to Discharge – 11 U.S.C. Section 727(a)(6)(A))

48. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 47, inclusive.
49. On June 17, 2012, this Court issued an Order Compelling Turnover of Documents. Despite having documents in their possession, the Debtors have refused to turnover documents pertaining to the various corporations, LLCs and S.A.s they control. While the Debtors turned over some documents for 2008 and 2009, the Debtors have failed to provide documents pursuant to the Order Compelling Turnover.
50. The Debtors refused to obey the lawful orders of this Court.

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1 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

2 1. For an order denying the Debtors' general discharge under Bankruptcy Code
3 Section 727;

4 2. For costs of suit; and

5 3. For such other and further relief as the Court deems proper.
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7 Dated: October 15, 2012

MACCONAGHY & BARNIER, PLC

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/s/ Jean Barnier
By: Jean Barnier
Attorneys for Plaintiff

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Exhibit B

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5 Telephone: (415) 362-2221
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7 Email: SheDoesBKLaw@aol.com
8 Attorney for Debtor Monette Stephens

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 (San Francisco Division)

12 In re
13 CARL ALEXANDER WESCOTT &
14 MONETTE ROSEMARIE STEPHENS,
15 Debtors.

Case Number 12-30143
APN 12-03148

16 _____/
17 **ANSWER TO COMPLAINT**
18 **OBJECTING TO DISCHARGE**

19 JANINA M. HOSKINS, TRUSTEE IN
20 BANKRUPTCY OF THE ESTATE OF
21 CARL ALEXANDER WESCOTT &
22 MONETTE ROSEMARIE STEPHENS,
23 Plaintiff,

24 v.

25 CARL ALEXANDER WESCOTT &
26 MONETTE ROSEMARIE STEPHENS,
27 Defendants.
28 _____/

29 Defendant Monette R. Stephens, debtor and defendant (hereafter "Ms. Stephens")
30 named herein above individually answers and responds to the complaint filed for and on
31 behalf of Plaintiff Janina M. Elder, Trustee in Bankruptcy of the Estate of Carl Alexander
32 Wescott and Monette Rosemarie Stephens as follows:
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1 JURISDICTION AND VENUE

2 1. Ms. Stephens admits that she signed a joint voluntary petition which was filed by her
3 and her husband Carl Alexander Wescott on January 17, 2012. Ms. Stephens admits that the
4 Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334 and
5 11 U.S.C. § 727 and that venue is proper in this district and except as so admitted defendant
6 neither admits or denies the other matter as set forth in ¶¶ 1 and 2 of the complaint.

7 GENERAL ALLEGATIONS

8 2. Ms. Stephens denies the allegations contained in ¶ 3 identified as “general
9 allegations” to wit that she engaged in any conduct to promote or syndicate any high risk
10 business from 2005 through to the present date. Ms. Stephens lacks information or
11 knowledge sufficient to form a basis on which to admit or deny the allegations and legal
12 conclusions of said paragraph alleging that said business(es) were speculative, high-risk, and
13 fraudulent real estate investment schemes including extensive highly leveraged land
14 holdings in areas of the North Coast region of California and flawed land development
15 schemes in Uruguay, Honduras, and Ecuador and on that basis denies said allegations and
16 conclusions.

17 3. Ms. Stephens lacks information or knowledge sufficient on which to form a basis to
18 admit or deny the allegations and legal conclusions contained in ¶ 4 of the complaint that
19 “virtually all of these investment schemes collapsed, leaving unpaid creditors holding claims
20 against the Debtors in excess of \$27 million according to the filed proofs of claim” and on
21 that basis denies said allegations and conclusions. Ms. Stephens denies that all of said claims
22 are against her.

23 4. Ms. Stephens is informed and believes that ¶ 5 of the complaint contains legal
24 conclusions and she lacks information or knowledge sufficient to form a belief as to the
25 truth of the allegations and conclusions and on that basis denies same.

26 5. Ms. Stephens lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations and conclusions including but not limited to those made in the plural
28 and on that basis denies same. Ms. Stephens did not personally borrow \$500,000.00 in May,

1 2011 and on that basis denies said allegation.

2 6. Ms. Stephens denies the allegations set forth in ¶ 7 of the complaint that the
3 POOK SNOOK DOOK LP (hereafter “PSD”) was a “fraudulent asset protection entity”. Ms.
4 Stephens lacks information or knowledge sufficient to form a basis on which to deny the
5 allegations relating to the withdrawal of funds, including but not limited to \$299,949.00,
6 from PSD on either April 13, 2011 and/or April 22, 2011 and on that basis denies said
7 allegation. Ms. Stephens is informed and believes that the paragraph contains legal
8 conclusions including but not limited to the undefined phrase that “no accounting has been
9 provided” and she lacks information or knowledge sufficient to form a belief as to the truth
10 of the allegation and legal conclusion and on that basis denies said allegations and
11 conclusions in whole and in part.

12 7. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
13 truth of the allegation that Wescott testified he was paid \$800,000.00 in 2010 by Jeremy
14 Smith for a second deed of trust on 7950 Hearst Road, Willits, CA as contained in ¶ 8 of the
15 complaint and on that basis denies said allegation. Ms. Stephens further lacks information or
16 knowledge sufficient to form a belief as to the truth of the allegations relating to deposits
17 of \$800,000.00 into any Wescott/Stephens accounts from a loan payoff and on that basis
18 denies said allegation.

19 8. Ms. Stephens lacks information or knowledge sufficient to form a belief relating to
20 the truth of the allegations and legal conclusions contained in ¶ 9 of the complaint including
21 but not limited to reference to “defrauded investors and bona fide creditors” and the
22 allegation as to what was allegedly apparent no later than the year 2008 to the Debtors. To
23 the extent that said allegations treat either assets and/or liabilities as conclusively plural
24 Ms. Stephens lacks information or knowledge sufficient to form a belief as to the legal
25 sufficiency of said allegations and legal conclusions and on that basis denies them. Ms.
26 Stephens denies that she individually would be subject to 7 and 8 figure claims. Ms.
27 Stephens denies that there exist any “defrauded investors and bona fide creditors” as
28 against her personally or otherwise.

1 9. Ms. Stephens admits that she was advised to and did execute a document identified
2 to her as a “transmutation agreement” in 2010. Ms. Stephens lacks information or
3 knowledge sufficient to form a belief as to the truth of the allegations and conclusion
4 contained in ¶ 10 of the complaint relating to Wescott receiving all the properties in Latin
5 America and/or that the properties in Latin America are valued at several million dollars
6 and that the properties in California are worthless and on that basis denies said allegations.

7 10. Ms. Stephens denies that she routinely transferred monies between her personal
8 accounts and numerous corporations, LLCs and S A s and/or that she wired money out of
9 her personal accounts and corporations, LLCs and S.A.s to Latin America as contained in ¶11
10 of the complaint. Ms. Stephens lacks information or knowledge sufficient to form a belief as
11 to the truth of the allegation and legal conclusions contained in ¶ 11 of the complaint on
12 that basis denies said allegations and conclusions, in whole and in part.

13 CLAIM OF RELIEF

14 Objection to Discharge - 11 U.S.C. Section 727(a)(2)(A)

15 11. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to
16 ¶¶ 1 through 12 of the complaint, inclusive, as so admitted and denied and herein denies all
17 said allegations not specifically admitted herein above.

18 12. Ms. Stephen denies that she, was the “Debtor” alleged to have withdrawn
19 \$299,949.00 on April 13 through April 22, 2011 from Ivy League Charter LLC as set forth in
20 ¶13 of the complaint. Ms. Stephens is informed and believes that said paragraph contains
21 legal conclusions and she lacks information or knowledge sufficient to form a belief as to the
22 truth of the allegations and conclusions contained in said paragraph and on that basis denies
23 each said allegation and conclusion, in whole and in part, except as so admitted herein
24 above.

25 13. Ms. Stephens denies the allegation contained in ¶14 of the Complaint and had no
26 knowledge of nor had she ever heard of Ogier Inc. except for the reference set forth in the
27 Trustee’s complaint. Ms. Stephens did not wire any money as alleged in ¶ 14 of the
28 Complaint. Ms. Stephens is informed and believes that said paragraph contains legal

1 conclusion and she lacks information or knowledge sufficient to form a belief as to the truth
2 of the allegations and legal conclusions contained in ¶ 14 and on that basis denies said
3 allegations in whole and in part.

4 14. Ms. Stephens denies the allegation contained in ¶ 15 of the Complaint and had no
5 knowledge of nor had she ever heard of International Aircraft Title & Escrow in Oklahoma
6 City, Oklahoma prior to receipt of the complaint. Ms. Stephens lacks information or
7 knowledge sufficient to form a belief as to the truth of the allegations and legal conclusions
8 contained in ¶ 15 and on that basis denies same.

9 15. Ms. Stephens denies the allegations set forth in ¶ 16. Ms. Stephens is informed and
10 believes that said paragraph contains legal conclusions and she lacks information or
11 knowledge sufficient to form a belief as to the truth of the allegations and legal conclusions
12 contained in said paragraph and on that basis denies said allegations in whole and in part.

13 SECOND CLAIM FOR RELIEF

14 (Objection to Discharge - 11 U.S.C. Section 727(a)(2)(B))

15 16. Ms. Stephen incorporates herein, as if set forth, each and all of her responses
16 to ¶¶ 1 through 17 of the complaint, inclusive, as so admitted and denied and herein denies
17 all said allegations not specifically admitted.

18 17. Ms. Stephens admits that she testified that she does not now hold a W2 position.
19 Except as so admitted Ms. Stephen denies the allegations as contained in ¶ 18 as being
20 argumentative and a misstatement of her testimony. Ms. Stephens is informed and believes
21 that said paragraph contains legal conclusion and she lacks information or knowledge
22 sufficient to form a belief as to the truth of the allegations and legal conclusions and on that
23 basis denies said allegations and conclusions in whole and in part.

24 18. Ms. Stephens admits that Atlas Consulting Inc is a corporation that is currently
25 wholly owned by herself and that it holds title to a property located in Santa Barbara which
26 Ms. Stephens had purchased as her separate property before marriage to Wescott. Ms.
27 Stephens admits that title to the property was transferred to the corporation in 2010 though
28 the mortgage debt against the property was not changed to reflect the change in title. Ms.

1 Stephens lacks information or knowledge sufficient to form a belief as to the truth of the
2 allegation(s) and legal conclusions contained in said ¶19 and on that basis denies any
3 allegation not specifically here admitted.

4 19. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
5 truth of the allegations and legal conclusions contained in ¶ 20 including but not limited to
6 that Wescott transferred \$5,570.00 from his personal Wells Fargo account to Atlas
7 Consulting Inc. and on that basis denies said allegations and conclusions.

8 20. Ms. Stephens admits that a motion for relief from stay was granted to HSBC Bank
9 USA. as alleged in ¶ 21.

10 21. Ms. Stephens admits that in reliance upon the Trustee's abandonment of the estate's
11 interest in the property, pursuant to the order entered by the Court on April 3, 2012,
12 (document number 51) that she was informed and believed that the property had re-vested
13 in the debtors. Ms. Stephens admits that action, if any, taken in relationship to said
14 property, occurred after the Trustee's abandonment of the property and the entry of the
15 Court's order granting the Trustee's Motion to Abandon the estate's interest in the Ashbury
16 property. Except as so admitted Ms. Stephens lacks information or knowledge sufficient to
17 form a belief as to the truth of the allegation(s), argument and conclusions contained in ¶
18 22 of the complaint and on that basis denies each not specifically here admitted.

19 22. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
20 truth of the allegation(s), argument and conclusions contained in ¶ 23 of the complaint and
21 on that basis denies each not specifically here admitted.

22 23. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
23 truth of the allegation(s), argument and conclusions contained in ¶ 24 of the complaint and
24 on that basis denies each not specifically here admitted.

25 24. Ms. Stephens denies that she personally caused Atlas Consulting to pay \$1,750.00 for
26 tickets for a Broadway show at the Curran Theater in San Francisco on May 24, 2012.

27 25. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
28 truth of the allegation(s), argument and conclusions contained in ¶ 26 of the complaint and

1 on that basis denies each not specifically here admitted.

2 THIRD CLAIM FOR RELIEF

3 (Objection to Discharge - 11 U.S.C. Section 727(a)(3))

4 26. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to
5 ¶¶ 1 through 27 of the complaint, inclusive, as so admitted and denied and herein denies all
6 said allegations not specifically admitted.

7 27. Ms. Stephens denies, in its entirety, the allegations contained in ¶ 28 of the
8 complaint alleging that she has not produced documents regarding alleged numerous
9 business holdings. Ms. Stephens does not have “numerous business holdings”. Ms. Stephens
10 has produced substantial and significant documents under her possession and control
11 through prior counsel and in connection with a production which occurred on or about
12 September 5, 2012, prior to the filing of the instant complaint, relating to her business
13 interests including but not limited to Atlas and Newforth. Further Ms. Stephens witnessed
14 the attorney for Trustee taking other materials which were identified as belonging to Carl
15 Wescott on September 5, 2012 which have never been identified or categorized by the
16 Trustee or the Trustee’s counsel. As such Ms. Stephens lacks personal knowledge or
17 information sufficient to admit or deny the allegation as it might pertain to said materials
18 and on that basis denies said allegations except as specifically admitted herein above. Ms.
19 Stephens further denies the characterization made by Trustee as to “Debtors’ business
20 entities” as Ms. Stephens only has her identified interest in Atlas Consulting Inc. and a prior
21 relationship to Newforth Partners as having existing at the time that the petition was filed.
22 Ms. Stephens lacks information or knowledge sufficient to form a belief as to the truth of
23 the allegation(s) and conclusions contained in ¶ 28 of the complaint, except as stated
24 herein, and on that basis denies said allegations and conclusions.

25 28. Ms. Stephens denies that she testified that there were 150 boxes of documents at
26 various locations to and including Ecuador as set forth in ¶ 29 of the complaint. Ms.
27 Stephens lacks information or knowledge sufficient to form a belief as to the truth of the
28 allegation(s) and conclusions contained in ¶ 29 of the complaint and on that basis denies

1 said allegations and conclusions in whole and in part.

2 29. Ms. Stephens is informed and believes that portions of the Motion to Quash were
3 granted by the Court, such that the allegations contained in ¶ 30 of the complaint are not
4 accurate, and she lacks information or knowledge sufficient to form a belief as to the truth
5 of the allegation(s) and conclusions contained in ¶ 30 of the complaint and on that basis
6 denies each said allegation and/or conclusion in whole and in part.

7 30. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
8 truth of the allegations contained in ¶ 31 of the complaint and on that basis denies said
9 allegations.

10 31. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
11 truth of the allegations contained in ¶ 32 of the complaint and on that basis denies said
12 allegations.

13 32. Ms. Stephens denies the allegations contained in ¶ 33 of the complaint. She has
14 turned over all of the documents responsive to each of the Trustee's document demands
15 which were in her personal possession and control. Except as so admitted and/or denied Ms.
16 Stephens lacks information or knowledge sufficient to form a belief as to the truth of the
17 allegations contained in ¶ 33 of the complaint and on that basis denies said allegations.

18 FOURTH CLAIM FOR RELIEF

19 (Objection to Discharge - 11 U.S.C. Section 727(a)(4)(A))

20 33. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to
21 ¶¶ 1 through 34 of the complaint, inclusive, as so admitted and denied and herein denies all
22 said allegations not specifically admitted.

23 34. Ms. Stephens denies the allegations contained in ¶ 35 of the complaint that she
24 falsely testified that she had lost the wedding ring while swimming and that she did not
25 know that the ring was not insured. Ms. Stephens did loose her wedding ring while
26 swimming and testified honestly thereto. Ms. Stephens lacks personal knowledge sufficient
27 to admit or deny that the ring was either purchased for and/or worth \$100,000.00 and on
28 that basis denies same. Ms. Stephens lacks information or knowledge sufficient to form a

1 belief as to the truth of the allegations, argument and conclusions contained in ¶ 35 of the
2 complaint and on that basis denies same.

3 35. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
4 truth of the allegations contained in ¶ 36 of the complaint relating to personal testimony by
5 Wescott and on that basis neither admits or denies said allegations. Ms. Stephens is
6 informed and believes that the schedules, as amended in June and July, 2012 identified
7 bank accounts outside of the United States. She lacks information or knowledge sufficient to
8 form a belief as to the truth of the allegations and conclusions as contained in ¶ 36 of the
9 complaint and on that basis denies said allegations in whole and in part.

10 36. Ms. Stephens denies that she routinely wired monies out of the country during 2011.
11 Ms. Stephens lacks information or knowledge sufficient to form a belief as to the truth of
12 the allegations and legal conclusions contained in ¶ 37 of the complaint and on that basis
13 denies same.

14 37. Ms. Stephens denies that the schedules and statement of financial affairs which she
15 signed are false and inaccurate. Except to that extent she can not identify business entities
16 belonging to others, to and including Carl Wescott, for which she has neither possession or
17 control Ms. Stephens has no bank accounts controlled by her as a managing member of
18 various corporations LLC and S.A.s except as have been specifically identified by her in
19 response to the Trustee's inquiries. Ms. Stephens has made no payments to Ogier Inc. and
20 has no personal knowledge of said entity prior to receipt of the Trustee's complaint. Ms.
21 Stephens has identified that debtors are the responsible paying parties for the vehicle
22 leased by Atlas and that the loan against the property is owned by Atlas is still identified as
23 being as against Stephens. Except as so admitted Ms. Stephens lacks information or
24 knowledge sufficient to form a belief as to the truth of the allegations and/or legal
25 conclusions contained in ¶ 38 of the complaint and on that basis denies all of the allegations
26 and conclusions set forth in ¶ 38 of the complaint.

27 38. Ms. Stephens denies that she made a knowingly false oath and/or account and denies
28 all such allegations contained in ¶ 39 of the complaint. Ms. Stephens is informed and

1 believes that said paragraph contains legal conclusions and she lacks information or
2 knowledge sufficient to form a belief as to the truth of said allegations and conclusions and
3 on that basis denies same in whole and in part.

4 FIFTH CLAIM FOR RELIEF

5 (Objection to Discharge - 11 U.S.C. Section 727(a)(4)(D))

6 39. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to
7 ¶¶ 1 through 40 of the complaint, inclusive, as so admitted and denied and herein denies all
8 said allegations not specifically admitted.

9 40. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
10 truth of the allegations contained in ¶ 41 and on that basis denies same.

11 41. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
12 truth of the allegations contained in ¶ 42 and on that basis denies same and further she has
13 turned over all of the documents responsive to each of the Trustee's document demands
14 which were and are in her personal possession and control.

15 42. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
16 truth of the allegations and legal conclusions contained in ¶ 43 and on that basis denies
17 same and further she has turned over all of the documents responsive to each of the
18 Trustee's document demands which were and are in her personal possession and control.

19 SIXTH CLAIM FOR RELIEF

20 (Objection to Discharge - 11 U.S.C. Section 727(a)(5))

21 43. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to ¶¶ 1
22 through 44 of the complaint, inclusive, as so admitted and denied and herein denies all said
23 allegations not specifically admitted.

24 44. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the truth
25 of the allegations and legal conclusions contained in ¶ 45 and that it contains reference to
26 testimony as plural. Ms. Stephens did not testify as identified and on that basis denies said
27 allegations.

28 45. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the

1 truth of the allegations and legal conclusions contained in ¶ 46 and that it further identifies
2 testimony given by Wescott and on that basis denies said allegations.

3 46. Ms. Stephens lacks information or knowledge sufficient to form a belief as to the
4 truth of the allegations and legal conclusions contained in ¶ 47 of the complaint as it relates
5 to allegations contained in paragraphs identifying testimony given by Wescott and on that
6 basis denies said allegations.

7 SEVENTH CLAIM FOR RELIEF

8 (Objection to Discharge - 11 U.S.C. Section 727(a)(6)(A))

9 47. Ms. Stephen incorporates herein, as if set forth, each and all of her responses to
10 ¶¶ 1 through 48 of the complaint, inclusive, as so admitted and denied and herein denies all
11 said allegations not specifically admitted.

12 48. Ms. Stephens denies the allegations contained in ¶ 49 of the Complaint as she has
13 turned over all of the documents responsive to each of the Trustee's document demands
14 which documents were and are in her personal possession and control and she has neither
15 possession or control over any LLC, corporation and /or S.A. except as she has identified to
16 wit, Atlas and Newforth.

17 49. Ms. Stephens denies the allegations contained in ¶ 50 of the Complaint as she has
18 complied with all relevant court orders and has turned over all of the documents responsive
19 to each of the Trustee's document demands which were and are in her personal possession
20 and control and she has neither possession or control over any LLC corporation and /or S.A.
21 except as she has identified to wit, Atlas and Newforth.

22 FIRST AFFIRMATIVE DEFENSE

23 As a first affirmative defense Ms. Stephens alleges that the Complaint and each of
24 the causes of actions set forth therein fail to state a claim for relief against this individual
25 defendant.

26 SECOND AFFIRMATIVE DEFENSE

27 As a second affirmative defense defendant Stephens alleges that the Complaint and
28 each of the causes of actions set forth therein are the direct and proximate result of

1 conduct by persons other than herself who are solely responsible or responsible with others
2 for alleged damage, if any there be.

3 THIRD AFFIRMATIVE DEFENSE

4 As a third affirmative defense defendant Stephens alleges that any omission alleged
5 by the complaint, if any there be, was not material to warrant denial of discharge as a
6 matter of law as the alleged omissions or misstatements did not objectively relate to any
7 asset having more than a de minimus value to the estate and that there was no material
8 failure by her sufficient to deny her discharge.

9 FOURTH AFFIRMATIVE DEFENSE

10 As a fourth affirmative defense defendant Stephens alleges that the complaint as
11 drafted contains matter intending to be statements of law and that she is not required to
12 plead to such statements of law.

13 WHEREFORE, Defendant requests that this Court deny Plaintiff's requests for relief,
14 dismiss this action as against her personally, that she be granted a discharge, and that the
15 Court grant any and all additional relief deemed appropriate.

16 Dated: November 19, 2012

Law Office of Sheila Gropper Nelson

17 By: /s/ Sheila Gropper Nelson

18 Sheila Gropper Nelson
Attorney for Monette Stephens

Exhibit C



Signed and Filed: December 28, 2012

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No. 12-30143DM
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,) Chapter 7
)
Debtors.)
)
JANINA M. HOSKINS, TRUSTE IN) Adversary Proceeding
BANKRUPTCY OF THE ESTATE OF) No. 12-3148DM
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
Plaintiff,)
)
v.)
)
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
)
Defendants.)
)

SCHEDULING ORDER FOR:

- [X] TRIAL IN ADVERSARY PROCEEDING
[] FINAL HEARING ON MOTION FOR RELIEF FROM STAY
[] TRIAL ON OBJECTIONS TO CLAIM
[] HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER ____ PLAN
[] OTHER:

Trial Scheduling Order
Revised July, 2011

- 1 ☒ A Status Conference in this adversary proceeding
2 ☐ A preliminary hearing on this motion for relief from stay
3 ☐ A hearing regarding objections to claim
4 ☐ A prehearing conference regarding objections to
5 confirmation of plan
6 ☐ Other: _____

7 was held on December 28, 2012.

8 Appearances were as follows:

9 ☒ For plaintiff Janina M. Hoskins, Trustee in Bankruptcy of
10 the Estate of Carl Alexander Wescott and Monette Rosemarie
11 Stephens ("Plaintiff"),

12 Jean Barnier, Esq. _____ ;

13 ☒ For defendant Carl Alexander Wescott _____ ("Defendant"),

14 Howard L. Hibbard, Esq. _____ ;

15 ☒ For defendant Monette Rosemarie Stephens _____ ("Defendant"),

16 Sheila Gropper Nelson, Esq. _____ ;

17 ☐ For Debtor(s): _____ ;

18 ☐ For Moving Party: _____

19 _____ ;

20 ☐ For Trustee: _____ ;

21 ☐ For Creditor: _____ ("Creditor"),

22 _____ ;

23 ☐ For United States Trustee: _____ ;

24 ☐ Other(s): _____

25 _____ .

26 Upon due consideration, the court hereby enters the following
scheduling order.

TRIAL. The trial or hearing ("Trial") on the above matter(s)
will commence on the Date and Time of Trial, set forth below, at

Trial Scheduling Order
Revised July, 2011

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1 the United States Bankruptcy Court, 235 Pine Street, Twenty-Second
2 Floor, San Francisco, CA 94104. The Time Reserved for Trial is
3 also shown below. During the week prior to the Trial, the court
4 may move the starting time or day. The court's Calendar
5 Clerk/Courtroom Deputy will advise the parties of any such change
6 by telephone. **All parties are cautioned to be prepared to adjust**
7 **their schedules accordingly.**

8 **MOTIONS.** Unless otherwise ordered, (a) motions to join other
9 parties and to amend the pleadings must be filed not later than **30**
10 days after entry of this scheduling order and (b) motions for
11 summary judgment must be heard no later than **30** calendar days
12 before the Date and Time of Trial.

13 **DISCOVERY.** Discovery shall be completed by the Discovery
14 Deadline shown below. Completion means that depositions must be
15 concluded, although not necessarily transcribed. As to written
16 and production discovery, responses must be due before the
17 Discovery Deadline. The court will attempt to resolve all
18 discovery disputes on an expedited basis via telephonic
19 conference, which any party may initiate by request to the court's
20 Calendar Clerk/Courtroom Deputy and notice to the other party
21 after they have met and conferred and made a good faith effort to
22 resolve the dispute. The party requesting the conference should
23 submit a brief letter explaining the issues to be presented.

24 The Discovery Deadline may be extended by the parties by
25 agreement, without an order of the court.

26 **EVIDENCE.** On motions for relief from stay, testimonial

Trial Scheduling Order
Revised July, 2011

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1 evidence at the Trial must be presented by written declaration(s)
2 or deposition excerpt(s), unless the court by order allows oral
3 testimony. B.L.R. 4001-1(e). Any motion for permission to
4 introduce any oral testimony (including by cross-examination of
5 the other party's declarant(s) or deponent(s)) shall be filed and
6 served (with chambers copies provided) no later than **14** calendar
7 days before the Date and Time of Trial and shall include the names
8 of the witnesses, the subject of their expected testimony, and,
9 where applicable, a statement of the reasons why the testimony
10 cannot properly be introduced by declaration(s) or deposition
11 excerpt(s). Any opposition shall be filed and served (with
12 chambers copies provided) no later than **10** calendar days before
13 the Date and Time of Trial. The court will rule on the motion
14 without a hearing. No such motion is required for cross-
15 examination or redirect examination of expert witnesses.

16 Except on motions for relief from stay, declarations of non-
17 expert witnesses will not be considered except by stipulation of
18 the parties.

19 **PRE-TRIAL SUBMISSIONS.** Not later than **7** calendar days before
20 the Date and Time of Trial, each party shall:

21 (a) File and serve a trial brief, which shall include a
22 summary of the facts to be proven and the legal theories on which
23 the party relies. Briefs shall not exceed **15** pages without prior
24 permission of the court. The court will not normally request or
25 permit post-trial briefs.

26 (b) Except for motions for relief from stay, file and

Trial Scheduling Order
Revised July, 2011

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1 serve a witness list, including a brief summary of the anticipated
2 testimony from each witness. If a party to the matter will be
3 called as a witness (even as an adverse witness) that party's name
4 must be included on the witness list. The presence of a witness'
5 name on the witness list is to alert the court and the other side
6 that the witness may be called. It does not mean that that person
7 will be called. Accordingly, each party is responsible for
8 ensuring the attendance of every witness the party intends to
9 call, whether or not named by the other side. Except in
10 exceptional circumstances, and absent consent by the other side, a
11 party will not be allowed to call a witness not named on that
12 party's witness list. This subparagraph shall not apply to expert
13 witnesses or their testimony.

14 (c) On motions for relief from stay, file and serve
15 (i) a notice identifying any declaration(s), deposition excerpt(s)
16 or memoranda previously filed in connection with the preliminary
17 hearing and (ii) any additional declarations the party wishes the
18 court to consider.

19 (d) File and serve a list of exhibits (other than those
20 to be used for impeachment or rebuttal) and exchange, but not
21 file, copies of all exhibits the party intends to introduce into
22 evidence. Any paper(s) in the court's file of which a party
23 intends the court to take judicial notice, or other facts that are
24 proper for judicial notice under Fed. R. Evid. 201, must be
25 reproduced and included as an exhibit(s). Copies of the
26 declarations filed and served in accordance with this order shall

1 be marked as exhibits in the manner described herein. All
2 exhibits are to be premarked for identification.

3 In adversary proceedings, Plaintiff's exhibits should be
4 marked by number and defendant's exhibits should be marked by
5 letter. On motions for relief from stay and other contested
6 matters initiated by motion, Moving Party's exhibits should be
7 marked by number and Respondent's, Debtor's or Trustee's exhibits
8 should be marked by letter. On objections to claim(s) and
9 objections to confirmation of plans, Creditor's exhibits should be
10 marked by number and Debtor's or Trustee's exhibits should be
11 marked by letter.

12 Each page of any exhibit that has more than one page is
13 to be numbered consecutively. The parties shall bring to Trial
14 copies of all exhibits for opposing counsel, the witnesses and the
15 court, together with an exhibit list. If a party has more that 10
16 exhibits, the exhibits should be placed in a three-ring binder
17 with a tab for each exhibit and the exhibit list placed at the
18 front of the binder.

19 **EXPERTS.** The presentation of expert testimony at Trial
20 shall be governed by the following:

21 (a) Direct evidence shall be presented by a declaration
22 that authenticates the report of the expert. See FRCP
23 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each party
24 shall file and serve declarations of experts and other documentary
25 evidence related thereto no later than 30 calendar days prior to
26 the Discovery Deadline; provided, however, on motions for relief

Trial Scheduling Order
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1 from stay, such declarations shall be filed and served no later
2 than **14** calendar days prior to the Date and Time of Trial.

3 (b) To cross-examine an opposing party's expert
4 declarant, a party shall notify the opposing party in writing or
5 by e-mail at least **3 court** days before the Date and Time of Trial,
6 in which case the declarant will be required to attend the Trial.
7 Any party who fails to notify the opposing party will not be
8 permitted to cross-examine the opposing party's expert. Any party
9 who requests the right to cross-examine an expert and then does
10 not do so will be expected to reimburse the opposing party no less
11 than the expenses incurred in producing the expert at the Trial.

12 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
13 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must advise
14 the opposing party of any objections to the introduction of
15 testimony or exhibits. Parties must meet and confer before Trial
16 to attempt to reach agreement regarding admissibility. The court
17 expects the parties to make good faith efforts to resolve all
18 evidentiary issues.

19 **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding
20 the introduction of testimony or exhibits are unsuccessful,
21 motions in limine should be filed and served no later than **4 court**
22 days before the Date and Time of Trial. Such motions should
23 include a certification that the moving party has complied in good
24 faith with the meet and confer requirements of the preceding
25 paragraph. Opposition should be filed and served no later than **1**
26 **court** day before the Date and Time of Trial.

Trial Scheduling Order
Revised July, 2011

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Copies of motions and oppositions should be delivered or faxed directly to Chambers. Motions in limine will be heard at the commencement of Trial.

STIPULATIONS. At the commencement of Trial, the parties must be prepared to stipulate into evidence all exhibits that are admissible for at least one purpose. Bona-fide objections may be reserved, with the issue of admissibility deferred until the exhibit is offered into evidence.

ORDER OF PRESENTATION AT TRIAL. Unless otherwise agreed by the parties or ordered by the court, Plaintiffs in adversary proceedings, moving parties on motions for relief from stay, and claimants on objections to claims will present their cases-in-chief first. On objections to confirmation of plans, debtors or other plan proponents will present their cases-in-chief first.

IMPEACHMENT AND REBUTTAL WITNESSES. The requirement of advance identification of witnesses and production of exhibits does not apply to witnesses and exhibits presented for purposes of impeachment or rebuttal.¹ This paragraph supercedes the expert disclosure procedure of FRCP 26(a)(2)(D)(ii), incorporated via Fed. R. Bankr. P. 7026.

NOTICE TO COURT. No later than the Monday of the week prior

¹ The proper function of rebuttal evidence is to contradict, impeach or defuse the impact of the evidence offered by an adverse party. Testimony offered only as additional support to an argument made in a case in chief is improper on rebuttal. Peals v Terre Haute Police Dept., 535 F.3d 621, 630 (7th Cir. 2008); see also Daly v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238 (W.D. Wash. 2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

1 to the Date and Time of Trial, counsel for: Plaintiff (in an
2 adversary proceeding); Moving Party (on a motion for relief from
3 stay); and the Debtor or Trustee (on objections to claim or
4 objection to plan confirmation) **must** telephone or e-mail the
5 court's Calendar Clerk/Courtroom Deputy, Ms. Lorena Parada (415-
6 268-2323; Lorena_Parada@canb.uscourts.gov) and report: whether the
7 parties intend to go forward with the Trial as scheduled; if
8 settlement is likely; whether the time reserved for the Trial is
9 realistic; and any other relevant information.

10 **NON-COMPLIANCE.** Any failure of a party to comply timely with
11 this scheduling order may result in judgment against such party,
12 removal of the Trial from calendar, exclusion of evidence or
13 imposition of monetary or non-monetary sanctions. See FRCP
14 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

15 **DATE AND TIME OF TRIAL:** June 3, 2013, at 9:30 a.m.

16 **TIME RESERVED FOR TRIAL:** One Day

17 **DISCOVERY DEADLINE:** May 3, 2013

18 **OTHER PROVISIONS:** A status conference will be held on
19 February 22, 2013.
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22 ***END OF ORDER***
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Trial Scheduling Order
Revised July, 2011

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COURT SERVICE LIST

Howard L. Hibbard, Esq.
Law Office of Howard L. Hibbard
251 Park Rd., Ste. 800
Burlingame, CA 94010

Exhibit “D”

MacCONAGHY & BARNIER, PLC
JOHN H. MacCONAGHY, SBN 83684
JEAN BARNIER, SBN 231683
GREGORY J. BABCOCK, SBN 260437
645 First St. West, Suite D
Sonoma, California 95476
Telephone: (707) 935-3205
Email: gbabcock@macbarlaw.com

Attorneys for Plaintiff,
Janina M. Hoskins, Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Debtors.

Case No.: 12-30143 DM

(Chapter 7)

AP No. 12-3148

**NOTICE OF HEARING ON
TRUSTEE'S MOTION FOR
SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION OF
ISSUES**

JANINA M. HOSKINS, Trustee in
Bankruptcy of the Estate of Carl Alexander
Wescott and Monette Rosemarie Stephens,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Defendants.

Date: April 26, 2013

Time: 10:00 a.m.

San Francisco Courtroom 22 - Montali

NOTICE IS HEREBY GIVEN THAT on **April 26, 2013 at 10:00 a.m.**, in the Courtroom of the Hon. Dennis Montali, United States Bankruptcy Judge, 235 Pine St., 22nd Floor, San Francisco, CA 94104, a hearing will be held on the *Motion for Summary Judgment or Summary Adjudication of Issues*, of Janina M. Hoskins, Chapter 7 Trustee in Bankruptcy of the Estate of Carl Alexander Wescott and Monette Rosemarie Stephens.

Dated: March 29, 2013

/s/ Gregory J. Babcock
Gregory J. Babcock
Attorneys for Plaintiff Janina M. Hoskins

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DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States, over the age of 18 years and not a party to the within action. My business address is 645 First St. West, Suite D, Sonoma, California 95476.

I served true and correct copies of the

NOTICE OF HEARING ON TRUSTEE'S MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES

TRUSTEE'S MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES

DECLARATION OF JEAN BARNIER IN SUPPORT OF TRUSTEE'S MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES

by placing said copies in the United States Mail at Sonoma, California on the date shown below, and in a sealed envelope(s) with first-class postage prepaid, addressed to the person(s) below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Sonoma, California on March 29, 2013.

/s/ Shanley Mansour
Shanley Mansour

Sheila Gropper Nelson
Law Offices of Sheila Gropper Nelson
55 Francisco St. 6th Fl.
San Francisco, CA 94133

Howard L. Hibbard
Law Offices of Howard L. Hibbard
251 Park Rd. #800
Burlingame, CA 94010

Carl Alexander Wescott
853 Ashbury Street
San Francisco, CA 94117

Monette Rosemarie Stephens
853 Ashbury Street
San Francisco, CA 94117

Exhibit “E”



MacCONAGHY & BARNIER, PLC
JOHN H. MacCONAGHY, State Bar No. 83684
JEAN BARNIER, State Bar No. 231683
645 First Street West, Suite D
Sonoma, CA 95476
Telephone: (707) 935-3205
Email: jbarnier@macbarlaw.com

Signed and Filed: May 2, 2013

Dennis Montali
DENNIS MONTALI
U.S. Bankruptcy Judge

Attorneys for Plaintiff,
Janina M. Hoskins, Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No.: 12-30143 DM
)	(Chapter 7)
CARL ALEXANDER WESCOTT and)	
MONETTE ROSEMARIE STEPHENS,)	AP No. 12-3148
)	
Debtors.)	
<hr/>		JUDGMENT DENYING DISCHARGE
JANINA M. HOSKINS, Trustee in)	OF DEBTORS
Bankruptcy of the Estate of Carl Alexander)	
Wescott and Monette Rosemarie Stephens,)	
)	
Plaintiff,)	
)	
v.)	
)	
CARL ALEXANDER WESCOTT and)	
MONETTE ROSEMARIE STEPHENS,)	
)	
Defendants.)	
<hr/>		

The Court having granted the Trustee's Motion for Summary Judgment to Deny Discharge of the Debtors and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the discharge of Carl Alexander Wescott and the discharge of Monette Rosemarie Stephens are denied pursuant to the provisions of 11 U.S.C. § 727(a).

END OF ORDER

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APPROVED AS TO FORM:

/s/ Sheila Gropper Nelson
Sheila Gropper Nelson
Attorney for Monette Rosemarie Stephens

Dated: May 1, 2013

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COURT SERVICE LIST

**UNITED STATES BANKRUPTCY COURT
Northern District of California**

In Re: Carl Alexander Wescott and Monette Rosemarie Stephens Debtor(s)	Case No.: 12-30143 DM 7 Chapter: 7
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NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

Notice is hereby given that a Judgment Denying Discharge of Debtors was entered on May 2, 2013, in Adversary Proceeding No. 12-3148 DM.
It is ordered that the discharge of Carl Alexander Wescott and the discharge of Monette Rosmarie Stephens are denied pursuant to the provisions of 11 U.S.C, 727(a).

Dated: 5/3/13

For the Court:

Gloria L. Franklin
Clerk of Court
United States Bankruptcy Court

Exhibit “F”

1 Sheila Gropper Nelson, S.B.N. 85031
2 Law Office of Sheila Gropper Nelson
3 55 Francisco St., Suite 600
4 San Francisco, CA 94133
5 Telephone: (415) 362-2221
6 Facsimile: (415) 576-1422
7 Email: SheDoesBkLaw@aol.com
8 Attorney for Monette Rosemarie Stephens

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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

Chapter 7

In re:	Bankruptcy Case No. 12-30143
Carl Alexander Wescott &	APN 12-03148
Monette Rosemarie Stephens	Notice of Stephens' Motion to
Debtors/	Vacate Entry of Order Denying Stephens
JANINA M. HOSKINS, TRUSTEE IN	Discharge and to Vacate Summary Judgment
BANKRUPTCY OF THE ESTATE OF	Pursuant to FRCP Rule 59 as applicable hereto
CARL ALEXANDER WESCOTT &	Date: June 28, 2013
MONETTE ROSEMARIE STEPHENS,	Time: 10:00 a.m.
Plaintiff,	Dept.: 22 nd Floor
v.	
CARL ALEXANDER WESCOTT &	
MONETTE ROSEMARIE STEPHENS,	
Defendants	/

TO ALL INTERESTED PARTIES, THE APPOINTED TRUSTEE JANINA
HOSKINS, THEIR ATTORNEYS OF RECORD, AND THE HONORABLE JUDGE
DENNIS MONTALI:

Ntc of Mtn FRCP 59/12-30143 & 12-3148

1 PLEASE TAKE NOTICE THAT on June 28, 2013 at 10:00 a.m. at 235
2 Pine Street Courtroom 22 San Francisco CA 94104 before the Honorable
3 Dennis Montali, presiding, Monette Rosemarie Stephens, through her
4 attorney of record, will move the Court for an order to alter and amend the
5 Order of Denying Discharge and the entry of summary judgment as against
6 her alone, and to reinstate the Adversary Action Number 12-03148 in the
7 above referenced Chapter 7, pursuant to FRCP 59 as applicable herein, and
8 for such other and further relief as may be just.

9 Said motion is brought on the grounds that the Court's determination
10 to deny the discharge of and to grant summary judgment will work a
11 manifest injustice without the opportunity to have a factual determination of
12 intent and compliance.

13 The motion is supported by this Notice and Notice of Motion, the
14 supporting Points and Authorities, supporting declarations, the pleadings and
15 papers filed in this matter and such other and further matter as the Court
16 deems just.

17 Dated May 16, 2013

Respectfully submitted
By: /s/ Sheila Gropper Nelson
Sheila Gropper Nelson
Attorney for Monette R. Stephens

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Ntc of Mtn FRCP 59/12-30143 & 12-3148

2

July 18, 2013

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



1 Sheila Gropper Nelson, S.B.N. 85031

2 Law Office of Sheila Gropper Nelson Signed and Filed: July 17, 2013

3 55 Francisco St., Suite 600

4 San Francisco, CA 94133

5 Telephone: (415) 362-2221

6 Facsimile: (415) 576-1422

7 Email: SheDoesBkLaw@aol.com

8 Attorney for Monette Rosemarie Stephens

Dennis Montali

DENNIS MONTALI

U.S. Bankruptcy Judge

9 IN THE UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 (San Francisco Division)

Chapter 7

12 In re:

Bankruptcy Case No. 12-30143

13 Carl Alexander Wescott &

APN 12-03148

14 Monette Rosemarie Stephens

Order Granting Stephens' Motion to

15 Debtors /

Vacate Entry of Order Denying Stephens'

16 JANINA M. HOSKINS, TRUSTEE IN

Discharge Pursuant to FRCP 59 et seq.

17 BANKRUPTCY OF THE ESTATE OF

18 CARL ALEXANDER WESCOTT &

Date: July 12, 2013

19 MONETTE ROSEMARIE STEPHENS,

Time: 10:00 a.m.

20 Plaintiff,

Dept.: 22nd Floor

21 v.

22 CARL ALEXANDER WESCOTT &

23 MONETTE ROSEMARIE STEPHENS,

24 Defendants /

25 Debtor/defendant Monette Rosemarie Stephens' Motion to Vacate Entry of Order
26 Denying her Discharge came on for hearing as being duly noticed, before the Honorable
27 Dennis Montali, presiding.

28 Appearances were as stated on the record.

12-30143/12-03148/Order Granting Motion to Vacate

Page 1 of 2

1 The Court having reviewed all of the pleadings, papers and evidence submitted and
2 oral argument as presented and for good cause shown

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 4 1. The Motion to Vacate the Judgment to Deny Monette Stephens' Discharge is
5 Granted for all of the reasons stated by the Court on the record.
6 2. Adversary Action APN 13-0148 is reinstated to the rolls.
7 3. A trial date of October 2, 2013 is set.

8
9
10 ** End of Order **
11
12

13 Approved as to form:
14

15 By: /s/ Jean Barnier
16 Jean Barnier, Esq.
17 MacConaghy & Barnier
18 Attorneys for Janina M. Hoskins,
19 Trustee in Bankruptcy of the Estate of
20 Carl Alexander Wescott &
21 Monette Rosemarie Stephens
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1 The Court having reviewed all of the pleadings, papers and evidence submitted and
2 oral argument as presented and for good cause shown

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 4 1. The Motion to Vacate the Judgment to Deny Monette Stephens' Discharge is
5 Granted for all of the reasons stated by the Court on the record.
6 2. Adversary Action APN 13-0148 is reinstated to the rolls.
7 3. A trial date of October 2, 2013 is set.

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10 ** End of Order **

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13 Approved as to form:

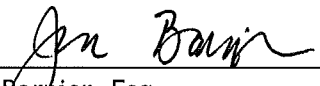
14
15 By: 
16 Jean Barnier, Esq.
17 MacConaghy & Barnier
18 Attorneys for Janina M. Hoskins,
19 Trustee in Bankruptcy of the Estate of
20 Carl Alexander Wescott &
21 Monette Rosemarie Stephens
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Exhibit “G”

July 17, 2013

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: July 15, 2013

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No. 12-30143DM
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,) Chapter 7
)
Debtors.)
)
JANINA M. HOSKINS,) Adversary Proceeding
) No. 12-3148DM
Plaintiff,)
)
v.)
)
CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
)
Defendants.)
)

SCHEDULING ORDER FOR:

- ☐ TRIAL IN ADVERSARY PROCEEDING
- ☐ FINAL HEARING ON MOTION FOR RELIEF FROM STAY
- ☐ TRIAL ON OBJECTIONS TO CLAIM
- ☐ HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER ____ PLAN
- ☒ OTHER: TRIAL ON OBJECTION TO DISCHARGE (MONETTE ROSEMARIE STEPHENS, ONLY)
- ☐ A Status Conference in this adversary proceeding

Trial Scheduling Order
Revised July, 2011

1 [] A preliminary hearing on this motion for relief from stay
2 [] A hearing regarding objections to claim
3 [] A prehearing conference regarding objections to
 confirmation of plan
4 [X] Other: Preliminary hearing on motion to vacate Order
 denying Stephens discharge and vacate summary judgment

5 was held on July 12, 2013.

6 Appearances were as follows:

7 [X] For plaintiff Janina M. Hoskins ("Plaintiff"),
8 Jean Barnier, Esq.;

9 [X] For defendant Monette Rosemarie Stephens ("Defendant"),
10 Shiela Gropper Nelson, Esq.;

11 [] For Debtor(s): _____;

12 [] For Moving Party: _____;
13 _____;

14 [] For Trustee: _____;

15 [] For Creditor: _____ ("Creditor"),
16 _____;

17 [] For United States Trustee: _____;

18 [] Other(s): _____
19 _____.

20 Upon due consideration, the court hereby enters the following
21 scheduling order.

22 **TRIAL.** The trial or hearing ("Trial") on the above matter(s)
23 will commence on the Date and Time of Trial, set forth below, at
24 the United States Bankruptcy Court, 235 Pine Street, Twenty-Second
25 Floor, San Francisco, CA 94104. The Time Reserved for Trial is
26 also shown below. During the week prior to the Trial, the court

Trial Scheduling Order
Revised July, 2011

-2-

1 may move the starting time or day. The court's Calendar
2 Clerk/Courtroom Deputy will advise the parties of any such change
3 by telephone. **All parties are cautioned to be prepared to adjust**
4 **their schedules accordingly.**

5 **MOTIONS.** Unless otherwise ordered, (a) motions to join other
6 parties and to amend the pleadings must be filed not later than **30**
7 days after entry of this scheduling order and (b) motions for
8 summary judgment must be heard no later than **30** calendar days
9 before the Date and Time of Trial.

10 **DISCOVERY.** Discovery shall be completed by the Discovery
11 Deadline shown below. Completion means that depositions must be
12 concluded, although not necessarily transcribed. As to written
13 and production discovery, responses must be due before the
14 Discovery Deadline. The court will attempt to resolve all
15 discovery disputes on an expedited basis via telephonic
16 conference, which any party may initiate by request to the court's
17 Calendar Clerk/Courtroom Deputy and notice to the other party
18 after they have met and conferred and made a good faith effort to
19 resolve the dispute. The party requesting the conference should
20 submit a brief letter explaining the issues to be presented.

21 The Discovery Deadline may be extended by the parties by
22 agreement, without an order of the court.

23 **EVIDENCE.** On motions for relief from stay, testimonial
24 evidence at the Trial must be presented by written declaration(s)
25 or deposition excerpt(s), unless the court by order allows oral
26 testimony. B.L.R. 4001-1(e). Any motion for permission to

Trial Scheduling Order
Revised July, 2011

-3-

1 introduce any oral testimony (including by cross-examination of
2 the other party's declarant(s) or deponent(s)) shall be filed and
3 served (with chambers copies provided) no later than **14** calendar
4 days before the Date and Time of Trial and shall include the names
5 of the witnesses, the subject of their expected testimony, and,
6 where applicable, a statement of the reasons why the testimony
7 cannot properly be introduced by declaration(s) or deposition
8 excerpt(s). Any opposition shall be filed and served (with
9 chambers copies provided) no later than **10** calendar days before
10 the Date and Time of Trial. The court will rule on the motion
11 without a hearing. No such motion is required for cross-
12 examination or redirect examination of expert witnesses.

13 Except on motions for relief from stay, declarations of non-
14 expert witnesses will not be considered except by stipulation of
15 the parties.

16 **PRE-TRIAL SUBMISSIONS.** Not later than **7** calendar days before
17 the Date and Time of Trial, each party shall:

18 (a) File and serve a trial brief, which shall include a
19 summary of the facts to be proven and the legal theories on which
20 the party relies. Briefs shall not exceed **15** pages without prior
21 permission of the court. The court will not normally request or
22 permit post-trial briefs.

23 (b) Except for motions for relief from stay, file and
24 serve a witness list, including a brief summary of the anticipated
25 testimony from each witness. If a party to the matter will be
26 called as a witness (even as an adverse witness) that party's name

1 must be included on the witness list. The presence of a witness'
2 name on the witness list is to alert the court and the other side
3 that the witness may be called. It does not mean that that person
4 will be called. Accordingly, each party is responsible for
5 ensuring the attendance of every witness the party intends to
6 call, whether or not named by the other side. Except in
7 exceptional circumstances, and absent consent by the other side, a
8 party will not be allowed to call a witness not named on that
9 party's witness list. This subparagraph shall not apply to expert
10 witnesses or their testimony.

11 (c) On motions for relief from stay, file and serve
12 (i) a notice identifying any declaration(s), deposition excerpt(s)
13 or memoranda previously filed in connection with the preliminary
14 hearing and (ii) any additional declarations the party wishes the
15 court to consider.

16 (d) File and serve a list of exhibits (other than those
17 to be used for impeachment or rebuttal) and exchange, but not
18 file, copies of all exhibits the party intends to introduce into
19 evidence. Any paper(s) in the court's file of which a party
20 intends the court to take judicial notice, or other facts that are
21 proper for judicial notice under Fed. R. Evid. 201, must be
22 reproduced and included as an exhibit(s). Copies of the
23 declarations filed and served in accordance with this order shall
24 be marked as exhibits in the manner described herein. All
25 exhibits are to be premarked for identification.

26 In adversary proceedings, Plaintiff's exhibits should be

1 marked by number and defendant's exhibits should be marked by
2 letter. On motions for relief from stay and other contested
3 matters initiated by motion, Moving Party's exhibits should be
4 marked by number and Respondent's, Debtor's or Trustee's exhibits
5 should be marked by letter. On objections to claim(s) and
6 objections to confirmation of plans, Creditor's exhibits should be
7 marked by number and Debtor's or Trustee's exhibits should be
8 marked by letter.

9 Each page of any exhibit that has more than one page is
10 to be numbered consecutively. The parties shall bring to Trial
11 copies of all exhibits for opposing counsel, the witnesses and the
12 court, together with an exhibit list. If a party has more that 10
13 exhibits, the exhibits should be placed in a three-ring binder
14 with a tab for each exhibit and the exhibit list placed at the
15 front of the binder.

16 **EXPERTS.** The presentation of expert testimony at Trial
17 shall be governed by the following:

18 (a) Direct evidence shall be presented by a declaration
19 that authenticates the report of the expert. See FRCP
20 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each party
21 shall file and serve declarations of experts and other documentary
22 evidence related thereto no later than 30 calendar days prior to
23 the Discovery Deadline; provided, however, on motions for relief
24 from stay, such declarations shall be filed and served no later
25 than 14 calendar days prior to the Date and Time of Trial.

26 (b) To cross-examine an opposing party's expert

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1 declarant, a party shall notify the opposing party in writing or
2 by e-mail at least **3 court** days before the Date and Time of Trial,
3 in which case the declarant will be required to attend the Trial.
4 Any party who fails to notify the opposing party will not be
5 permitted to cross-examine the opposing party's expert. Any party
6 who requests the right to cross-examine an expert and then does
7 not do so will be expected to reimburse the opposing party no less
8 than the expenses incurred in producing the expert at the Trial.

9 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
10 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must advise
11 the opposing party of any objections to the introduction of
12 testimony or exhibits. Parties must meet and confer before Trial
13 to attempt to reach agreement regarding admissibility. The court
14 expects the parties to make good faith efforts to resolve all
15 evidentiary issues.

16 **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding
17 the introduction of testimony or exhibits are unsuccessful,
18 motions in limine should be filed and served no later than **4 court**
19 days before the Date and Time of Trial. Such motions should
20 include a certification that the moving party has complied in good
21 faith with the meet and confer requirements of the preceding
22 paragraph. Opposition should be filed and served no later than **1**
23 **court** day before the Date and Time of Trial.

24 Copies of motions and oppositions should be delivered or
25 faxed directly to Chambers. Motions in limine will be heard at
26 the commencement of Trial.

Trial Scheduling Order
Revised July, 2011

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1 **STIPULATIONS.** At the commencement of Trial, the parties must
2 be prepared to stipulate into evidence all exhibits that are
3 admissible for at least one purpose. Bona-fide objections may be
4 reserved, with the issue of admissibility deferred until the
5 exhibit is offered into evidence.

6 **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed by
7 the parties or ordered by the court, Plaintiffs in adversary
8 proceedings, moving parties on motions for relief from stay, and
9 claimants on objections to claims will present their cases-in-
10 chief first. On objections to confirmation of plans, debtors or
11 other plan proponents will present their cases-in-chief first.

12 **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of
13 advance identification of witnesses and production of exhibits
14 does not apply to witnesses and exhibits presented for purposes of
15 impeachment or rebuttal.¹ This paragraph supercedes the expert
16 disclosure procedure of FRCP 26(a)(2)(D)(ii), incorporated via
17 Fed. R. Bankr. P. 7026.

18 **NOTICE TO COURT.** No later than the Monday of the week prior
19 to the Date and Time of Trial, counsel for: Plaintiff (in an
20 adversary proceeding); Moving Party (on a motion for relief from
21 stay); and the Debtor or Trustee (on objections to claim or
22 _____

23 ¹ The proper function of rebuttal evidence is to contradict,
24 impeach or defuse the impact of the evidence offered by an adverse
25 party. Testimony offered only as additional support to an argument
26 made in a case in chief is improper on rebuttal. Peals v Terre
Haute Police Dept., 535 F.3d 621, 630 (7th Cir. 2008); see also Daly
v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238 (W.D. Wash.
2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

Trial Scheduling Order
Revised July, 2011

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1 objection to plan confirmation) **must** telephone or e-mail the
2 court's Calendar Clerk/Courtroom Deputy, Ms. Lorena Parada (415-
3 268-2323; Lorena_Parada@canb.uscourts.gov) and report: whether the
4 parties intend to go forward with the Trial as scheduled; if
5 settlement is likely; whether the time reserved for the Trial is
6 realistic; and any other relevant information.

7 **NON-COMPLIANCE.** Any failure of a party to comply timely with
8 this scheduling order may result in judgment against such party,
9 removal of the Trial from calendar, exclusion of evidence or
10 imposition of monetary or non-monetary sanctions. See FRCP
11 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

12 **DATE AND TIME OF TRIAL:** October 2, 2013, at 9:30 a.m.

13 **TIME RESERVED FOR TRIAL:** One Day

14 **DISCOVERY DEADLINE:** N/A

15 **OTHER PROVISIONS:**

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18 ***END OF ORDER***
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Exhibit “H”

1 MacCONAGHY & BARNIER, PLC
JOHN H. MacCONAGHY, State Bar No. 83684
2 JEAN BARNIER, State Bar No. 231683
645 First Street West, Suite D
3 Sonoma, CA 95476
Telephone: (707) 935-3205
4 Email: jbarrier@macbarlaw.com

5 Attorneys for Plaintiff,
Janina M. Hoskins, Trustee in Bankruptcy

6
7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 In re)	Case No.: 12-30143 DM
)	(Chapter 7)
11 CARL ALEXANDER WESCOTT and)	
12 MONETTE ROSEMARIE STEPHENS,)	AP No. 12-3148
)	
13 Debtors.)	
<hr/>		NOTICE OF MATTERS DEEMED
14 JANINA M. HOSKINS, Trustee in)	ADMITTED
Bankruptcy of the Estate of Carl Alexander)	
15 Wescott and Monette Rosemarie Stephens,)	
)	
16 Plaintiff,)	
)	
17 v.)	
)	
18 MONETTE ROSEMARIE STEPHENS,)	
)	
19 Defendant.)	
<hr/>		

20
21 Notice is hereby given that the Admissions of Monette Rosemarie Stephens are deemed
22 admitted pursuant to FRCP Rule 36(a)(3):

23 A matter is admitted unless, within 30 days after being served, the party to whom
24 the request is directed serves on the requesting party a written answer or objection
addressed to the matter and signed by the party or its attorney.

25 The Request for Admissions was duly served on April 2, 2013. Stephens had thirty days to
26 respond. No response or request for additional time has been made. (See Declaration of Jean
27 Barnier).

28

1 Dated: July 25, 2013

MACCONAGHY & BARNIER, PLC

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4 /s/ Jean Barnier
Jean Barnier
Attorneys for Plaintiff
5 Janina M. Hoskins, Trustee in Bankruptcy
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1 MacCONAGHY & BARNIER, PLC
JOHN H. MacCONAGHY, State Bar No. 83684
2 JEAN BARNIER, State Bar No.231683
645 First Street West, Suite D
3 Sonoma, CA 95476
Telephone: (707) 935-3205
4 Email: jbarrier@macbarlaw.com

5 Attorneys for Plaintiff,
Janina M. Hoskins, Trustee in Bankruptcy

6
7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 In re)
11)
12 CARL ALEXANDER WESCOTT and)
MONETTE ROSEMARIE STEPHENS,)
13 Debtors.)

Case No.: 12-30143 DM
(Chapter 7)

AP No. 12-3148

14 JANINA M. HOSKINS, Trustee in)
Bankruptcy of the Estate of Carl Alexander)
15 Wescott and Monette Rosemarie Stephens,)
16 Plaintiff,)

**DECLARATION OF JEAN BARNIER
IN SUPPORT OF NOTICE OF
MATTERS DEEMED ADMITTED**

17 v.)
18 MONETTE ROSEMARIE STEPHENS,)
19 Defendant.)

20
21 I, Jean Barnier, state:

22 1. I am an attorney admitted to the bar of this Court and am counsel of record for the
23 Trustee in this case.

24 2. On April 2, 2013, I caused to be served on Sheila Gropper-Nelson, attorney for the
25 defendant, Request for Admissions. A copy of the Proof of Hand Delivery is attached and labeled
26 Exhibit 1.

27 3. Neither I or anyone in my firm have received a response to the Request for
28 Admissions served on April 2, 2013.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, that I have personal first-hand knowledge thereto, that if called as a
3 witness, I could and would testify competently thereto, and that this declaration was executed on
4 July 25, 2013 at Sonoma, California.

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6 /s/ Jean Barnier
Jean Barnier
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EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Jean Barnier, 231683 MacConaghy & Barnier, PLC 645 First St. West, Ste D Sonoma, CA 95476		TELEPHONE NO.: (707) 935-3205		FOR COURT USE ONLY	
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. 8039			
Insert name of court, judicial district or branch court, if any: United States Bankruptcy Court, Northern District of California 235 Pine St San Francisco, CA 94104-2701					
PLAINTIFF Janina Hoskins, Trustee in Bankruptcy					
DEFENDANT: Carl A. Wescott and Monette Rosemarie Stephens					
PROOF OF HAND DELIVERY	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 12-03143 DM	

At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of the following: Interrogatories to Defendant Monette Rosemarie Stephens, Request for Admissions to Defendant Monette Rosemarie Stephens

NAME OF ATTORNEY: Sheila Gropper Nelson, Esq.

DELIVERED TO: Mel Lee, Front Desk - Person in Charge of Office

DATE & TIME OF DELIVERY: 4/2/2013

2:30 PM

ADDRESS, CITY, AND STATE: 55 Francisco Street 6th Floor
San Francisco, CA 94133

MANNER OF SERVICE:

Delivery to Law Office: Service was made by delivery to the attorney's office; or by leaving the document(s) with his/her clerk over the age of 18 therein; or with a person having charge thereof; or if there was no such person in the office, by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office. [CCP §1011(a)]

BY FAX

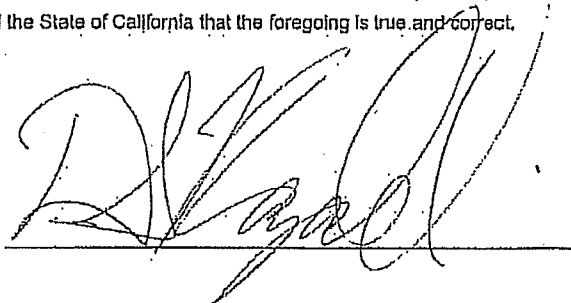
Fee for Service: \$ 109.95

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 4/3/2013

Dietrich S. Rapalski
Registered California Process Server: SAN FRANCISCO County
Registration No. 2012-0001236
One Legal - 194 Marin
504 Redwood Blvd #223
Novato, CA 94947
415-491-0606

Signature:



ER2(a)(23)(New July 1, 1997)

OL# 7307740

Exhibit “I”

Sheila Gropper Nelson, SBN 85031
Law Office of Sheila Gropper Nelson
55 Francisco St., Suite 600
San Francisco CA 94133
Phone 415-362-2221
Fax 415-576-1422
Email SheDoesBkLaw@aol.com

August 5, 2013
Jean Barnier, Esq.
MacConaghy & Barnier, PLC
645 First Street West Suite D
Sonoma CA 95476
By Electronic Transmission to: jbarnier@macbarlaw.com
Facsimile Transmission to: 707- 935-7051
and First Class Mail

Re: Case Number 12-03148
Request for Admissions Deemed Admitted

Dear Ms. Barnier:

We are in receipt of your pleading, identified as "Request for Admissions Deemed Admitted".

Because the date for response to the Trustee's rather late filed discovery fell after the date the Court ruled on the motion for summary judgment we believe the document is inappropriate as well as misleading.

Response to Trustee's propounded discovery not only fell on the date of discovery cut off but fell after the Court had granted summary judgment making any further conduct within the adversary at that time moot. As you are aware the Trustee's Motion for Summary Judgment was heard and granted by the Court on April 26, 2013. The Court's order denying discharge was signed on May 2, 2013 a day before the discovery cut-off.

Based on those specific dates the necessity to respond to the previously served requests for admissions was either eliminated, overridden or at a minimum unclear.

As has been held by the 9th Circuit what is most critical for case-dispositive sanctions, such as deeming admissions admitted, relates to the risk of prejudice and whether the "alleged discovery violation" "threaten to interfere with the rightful decision of the case." (See Valley Engineers Inc. v. Electric Engineering Co., 158 F.3d 1051, 1057 (9th Cir. 1998))

APN 12-03148/RFA

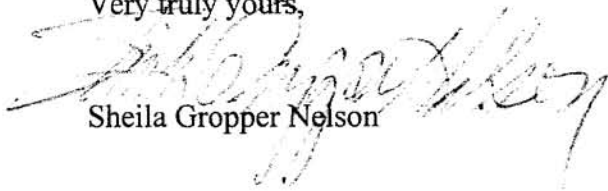
Page 1 of 2

The chain of dates together with Trustee's identification that "discovery was closed" give little support to the filing of a pleading alleging a failure to respond to the admissions. The attempt to end run the discovery process is also unsupported since the Court did not reinstate the adversary until July 15, 2013. Nothing in this record demonstrates that the absence of response to trustee's previously propounded requests for admission was intentional or intended to interfere with the adversary proceeding.

To the extent that you have citation to support a different conclusion please provide it by Wednesday of this week. Alternatively please withdraw the document titled Request for Admissions deemed admitted.. To avoid unnecessary burden on the Court's and Estate's resources the parties can also stipulate to allow a reopening of discovery for limited purpose including response to the discovery by the Trustee.

Others have opined that the filing gives the distinct impression of amounting to a personal vendetta directed to either this debtor or her counsel rather than a reasoned intent to fulfill the fiduciary obligations not to abuse the resources of the Estate, Court, and Debtor. It is hoped that that conclusion can be avoided. Should we not be able to resolve this without motion a motion will be brought by the close of this week.

Very truly yours,



Sheila Gropper Nelson

cc: Client

From: Jean Barnier <JBarnier@macbarlaw.com>
To: shedoesbklaw <shedoesbklaw@aol.com>
Subject: RE: 12-03148/ Wescott/Stephens
Date: Tue, 6 Aug 2013 12:38 pm

Sheila,

I do not see the point in engaging in fruitless conversation and wasting estate money. I believe the Rule is on point and very clear. You seem to think there's ambiguity to the Rule or an exception. I do not. There is nothing to "Meet and Confer" about since we have two very different viewpoints about the law. Meet and confer does not mean I have to explain my position or agree with you. Once again, you are free to file any papers you wish. You demanded that I withdraw my paper and I have told you I will not.

Jean Barnier

MacConaghy & Barnier, PLC

645 First St. West, Suite D

Sonoma, CA 95476

Telephone: (707) 935-3205

Facsimile: (707) 935-7051

jbarnier@macbarlaw.com

www.macbarlaw.com

This message and any attachments hereto contain confidential information and information which may be subject to the attorney-client privilege. It is intended for the individual or entity named above. If you are not the intended recipient, please do not read, copy, use, or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Thank you.

From: shedoesbklaw@aol.com [<mailto:shedoesbklaw@aol.com>]

Sent: Tuesday, August 06, 2013 11:47 AM

To: Jean Barnier

Subject: RE: 12-03148/ Wescott/Stephens

So you are essentially not prepared to meet your obligation to meet and confer Correct

-----Original Message-----

From: Jean Barnier <JBarnier@macbarlaw.com>

To: shedoesbklaw <shedoesbklaw@aol.com>

Sent: Tue, Aug 6, 2013 11:14 am

Subject: RE: 12-03148/ Wescott/Stephens

Sheila,

I cited the applicable Rule in my papers. There is no ambiguity in the Rule. If you feel the Rule doesn't apply, you are certainly free to file any papers with the Court since I am not going to withdraw the paper I filed.

Jean Barnier

MacConaghy & Barnier, PLC

645 First St. West, Suite D

Sonoma, CA 95476

Telephone: (707) 935-3205

Facsimile: (707) 935-7051

jbarnier@macbarlaw.com

www.macbarlaw.com

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From: shedoesbklaw@aol.com [<mailto:shedoesbklaw@aol.com>]

Sent: Tuesday, August 06, 2013 11:08 AM

To: Jean Barnier

Subject: RE: 12-03148/ Wescott/Stephens

Jean

No I believe that merely saying you disagree without citation or support is not meeting **your** meet and confer obligations. They are mutual.

Please respond with some substance.

Thank you

Very truly yours

Sheila Gropper Nelson

-----Original Message-----

From: Jean Barnier <JBarnier@macbarlaw.com>

To: shedoesbklaw <shedoesbklaw@aol.com>

Sent: Tue, Aug 6, 2013 10:23 am

Subject: RE: 12-03148/ Wescott/Stephens

Sheila,

Thank you for your letter. I disagree with your legal analysis. This will comply with your need for meet and confer.

Jean Barnier

MacConaghy & Barnier, PLC

645 First St. West, Suite D

Sonoma, CA 95476

Telephone: (707) 935-3205

Facsimile: (707) 935-7051

jbarnier@macbarlaw.com

www.macbarlaw.com

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From: shedoesbklaw@aol.com [<mailto:shedoesbklaw@aol.com>]

Sent: Monday, August 05, 2013 12:01 PM

To: Jean Barnier

Subject: 12-03148

Jean

Please see the attached letter. This is an intent to meet and confer. I look forward to your response.

Very truly yours,

Sheila Gropper Nelson

Exhibit “J”

Sheila Gropper Nelson, SBN 85031
Law Office of Sheila Gropper Nelson
55 Francisco St., Suite 600
San Francisco, CA 94133
Phone: (415) 362-2221
Facsimile: (415) 576-1422
Email: SheDoesBkLaw@aol.com
Attorney for Monette Rosemarie Stephens

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
[San Francisco Division]

In re:
Carl Alexander Wescott &
Monette Rosemarie Stephens
Debtors.

Case No. 12-30143
APN 12-03148
Chapter 7

Stipulation to Shorten Time for Notice of
Motion and Motion to Determine that Request
for Admissions Not Deemed Admitted and/or
Alternative Motion to Determine Discovery
Cutoff Controls and/or Motion to Grant Leave
to Respond to Request for Admissions.

Date August 23, 2013
Time 10:30 a.m.
Place: 22nd Floor

Janina Hoskins, Trustee in Bankruptcy of
the Estate of Carl Alexander Wescott
& Monette Rosemarie Stephens,

Plaintiff,

v.
Carl Alexander Wescott &
Monette Rosemarie Stephens,

Defendants.

_____)

Appointed Trustee Janina Hoskins, by and through her attorney of record, Jean
Barnier, MacConaghy & Barnier PC and defendant Monette Rosemarie Stephens, through her
attorney of record, Sheila Gropper Nelson, Law Office of Sheila Gropper Nelson, hereby
agree and stipulate to shorten the time within which a Motion to Determine that Response to
Request for Admissions not Deemed Admitted and/or alternative Motion to Determine

Stipulation to Shorten time for
Mtn re Request for Admissions /12-03148

Discovery Cutoff Controls and/or alternative Motion to Grant Leave to Respond to Request for Admissions can be brought as follows:

- [1] They hereby stipulate that the Motion(s) may be heard on shortened time before the Honorable Judge Dennis Montali on August 23, 2012 at 10:30 a.m. on the 22nd Floor located at 235 Pine St. San Francisco CA 94104.
- [2] That moving papers to be served by electronic mail to Trustee's counsel by 5 p.m. Monday August 12, 2013;
- [3] That Trustee's Opposition, if any, to be served on moving party electronically by 5 p.m. August 19, 2013; and
- [4] That Reply to Opposition, if any, to be electronically served on Trustee's counsel by Noon on August 21, 2013.

Dated: 8/09/2013

/s/ Jean Barnier
Jean Barnier Attorney for Trustee Hoskins

Dated: 08/09/2013

/s/ Sheila Gropper Nelson
Sheila Gropper Nelson

Stipulation to Shorten time for
Mtn re Request for Admissions /12-03148

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